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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.29 to 32 of 2007

Commissioner of Wealth-tax,
Chennai. ..Appellant in all the T.C.(A)s.

Vs.

M/s.VGP Housing Pvt. Ltd.,
VGP Square, Saidapet,
Chennai-600 015. ..Respondent in all the T.C.(A)s.

Appeals under Section 27A of the Wealth-tax Act, 1957 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'B', Chennai in W.T.A. Nos.2/Mds/2000, 83/Mds/96, 84/Mds/96 and 146/Mds/95 dated 17.02.2006 for the assessment years 1985-86, 1990-91, 1991-92 and 1989-90 respectively against the order of the Commissioner of Wealth Tax (Appeals) II Chennai-34 dated 30.9.1999 in W.T.A.Nos.89,90,91,92 and 93/ 92-93 and 8/96-97 for teh Assessment years 1984-85, 1985-86, 1986-87, 987-88, 1988-89, 1992-93 and order of Commissioner of Wealth Tax (Appeals) I Madras 34 dated 8.12.1995 in ITA.Nos. 41 and 40/94-95 for the Assessment years 1990-91 and 1991-92 and dated 30.12.1994 in ITA.No15/94-5 for the Assessment year 1989-90 respectively against the order of the Assistant Commissioner of wealth Tax Central III (2) Madras -34 dated 30.12.1994 , 30.12.1994, 18-3.1994 and 30.6.1984 in PAN/ GIR.No.47-033-CQ-3933 for the Assessment years 1991-92, 1990-91 1989-90 and 1985-86 respectively.

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for
Income-tax Department

For Respondent : No appearance

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JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

These appeals are filed under Section 27A of the Wealth-tax Act, 1957 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'B', Chennai in W.T.A. Nos.2/Mds/2000, 83/Mds/96, 84/Mds/96 and 146/Mds/95 dated 17.02.2006 raising the following common substantial question of law:-

> "Whether in the facts and circumstances of the case, the Tribunal was right in directing the assessing officer to invoke specific rules 3, 4 & 5 of Schedule III of the Wealth-tax Act when the transaction of lease is between sister concerns, without giving the assessing officer the option of applying Rules 8 and 20, even if they are found to be relevant?"

2. When the matter came up on 05.02.2007, notice was ordered by this Court returnable in two weeks. Private notice was also permitted. Inspite of the same, there is no appearance on behalf of the respondent.

3. The facts leading to the above substantial question of law are as under:-

The assessee is a Private Limited Company dealing in the purchase and sale of lands. The assessee purchases vast extent of land, plots them out and later sells the same as house sites. The assessee had not filed Return for the assessment years in question on the ground that it is not subject to wealth-tax. Later, the assessment was reopened and the Assessing Officer included the value of 54 acres of land at Injambakkam owned by the assessee, in the net wealth of the assessee. Aggrieved, the assessee filed appeals to the Commissioner of Wealth-tax (Appeals) and contended that the assessee is not subject to wealth-tax. The Commissioner of Wealth-tax (Appeals) held that the assessee is entitled to exemption from wealth-tax and allowed the appeals. Aggrieved, the Revenue filed appeals to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the Revenue's appeals and held that the assets cannot be excluded from the levy of wealth-tax in view of the provision of Section 40 of the Finance Act, 1983. While allowing the appeals, the Tribunal also given a direction to the Assessing Officer to value the impugned property in view of Rules 3, 4 and 5 of Schedule III of the Wealth-tax Act. Hence the present appeals by the Revenue.

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4. Learned Standing Counsel appearing for the Revenue submitted that the Tribunal has remanded the matter only with a specific direction to invoke Rules 3, 4 and 5 of Schedule III of the Wealth-tax Act alone and hence the discretionary powers of the Officer are restricted by the specific remand. Hence the Revenue may not have the option to apply the Residuary Rules, Viz. Rules 8 and 20, if situation warrants.

5. Heard the counsel. The Tribunal held that the assessee is subject to wealth-tax and for the purpose of determining the value of the immovable property, the Tribunal remanded the matter with a direction to the Assessing Officer to apply Rules 3, 4 and 5 of the Schedule III of the Wealth-tax Act. The order of the Tribunal reads as under:-

> "13. We have gone through Schedule III wherein Rule 3 Part B for determining the value of the immovable property has been provided. First of all, we have gone through the provisions of Rule 3, 4 and 5 of Schedule III and seen that the let out property is to be valued after arriving at by multiplying the net maintainable rent at 12.5. In this case, the Assessee admitted that there is written lease agreement but the Assessee has to clearly state before the Assessing Officer that as to how much period, the property was on lease because for application of Rule 3, unexpired period of lease is to be calculated by valuing the property. Even in the case of Bharat Hari Singhania v. CWT [1994] 207 ITR 1, the Hon'ble Supreme Court has held that "Where there is a rule prescribing the manner in which a particular property has to be valued, the authorities under the Act have to follow it". In the present case, the property has to be valued as per Schedule III which is mandatory. Hence, we direct the Assessing Officer to value the property in view of Rule 3, 4 & 5 of Schedule III after taking the annual rent as the property is let out the years ending on the valuation date and the actual rent received by the owner in respect of that year. In this case, the property i.e. land and superstructure are let out to its sister concern and the rent as assessed in the income-tax proceeding will be taken as the annual rent and accordingly, the valuation of property be made by the Assessing Officer. In view of this, we set aside this issue to the file of the Assessing Officer to value the property in view of the

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> provisions of Rule 3, 4 & 5 of Schedule III of the W.T. Act and direct the Assessing Officer to take the annual rent as declared in the income-tax returns."

The only grievance of the Revenue is that the Tribunal has specifically mentioned only the Rules 3, 4 & 5 to be invoked and directed the Assessing Officer to determine the value of the property. Schedule-III of the Wealth-tax Act deals with rules for determining the value of assets. Part B of Schedule-III deals with immovable property and Rule 3 deals with valuation of immovable property. Rule 4 deals with net maintainable rent how to be computed. Rule 5 deals with gross maintainable rent how to be computed. Rule 6 deals with adjustments to value arrived at under Rule 3, for unbuilt area of plot of land. Rule 7 deals with adjustment for unearned increase in the value of the land. Rule 8 deals with the rule not to apply in certain cases, which reads as under:-

> "8. Rule 3 not to apply in certain cases.- Nothing contained in rule 3 shall apply,-
> (a) where, having regard to the facts and circumstances of the case, the Assessing Officer, with the previous approval of the Deputy Commissioner, is of opinion that it is not practicable to apply the provisions of the said rule to such a case; or
> (b) where the difference between the unbuilt area and the specified area exceeds twenty per cent. of the aggregate area; or
> (c) where the property is constructed on leasehold land and the lease expires within a period not exceeding fifteen years from the relevant valuation date and the deed of lease does not give an option to the lessee for the renewal of the lease,
> and in any case referred to in clause (a) or clause (b) or clause (c), the value of the property shall be determined in the manner laid down in rule 20."

From a reading of the above, it is clear that if Rule 3 is not practicable to be applied to the facts of a case, the Assessing Officer, with the approval of the Deputy Commissioner, apply Rule 8. Rule 20 comes under Part H under the heading "Residuary", which reads as follows:-

> "20. Valuation of assets in other cases.-(1) The value of any asset, other than cash, being an asset which is not covered by rules 3 to 19, for the purposes of this Act, shall be estimated to be the price which, in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date.
> (2) Notwithstanding anything contained in sub-

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rule (1), where the valuation of any asset referred to in that sub-rule is referred by the Assessing Officer to the Valuation Officer under section 16A, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date.

(3) Where the value of any asset cannot be estimated under this rule because it is not saleable in the open market, the value shall be determined in accordance with such guidelines or principles as may be specified by the Board from time to time by general or special order."

The apprehension of the Revenue is that the Tribunal had given only a specific direction to the Assessing Officer to apply only Rules 3, 4 and 5. On a complete reading of Schedule-III, the irresistible conclusion is that the Assessing Officer should consider and apply Rules 3, 4 and 5, and if he is of the opinion that it is not practicable to apply the Rules 3, 4 and 5, he could rely on Rule 8 or Rule 20 and the value of the property could be determined in the manner laid down under Rule 8 or Rule 20. Hence, there is no restriction for the Assessing Officer to apply the relevant Rules for determining the value of the immovable property and hence the apprehension of the Revenue has no basis and it is an imaginary one. We make it clear that it is for the Assessing Officer to apply first the Rules 3, 4 and 5 and if he feels the same is not practicable to apply, he is at liberty to invoke Rule 8 or Rule 20 and determine the value of the assets in accordance with Schedule-III of the Wealth-tax Act.

6. With the above observations, the tax cases are disposed of. Consequently, M.P.No.1 of 2007 in T.C.(A) No.30 of 2007, M.P.No.1 of 2007 in T.C.(A) No.31 of 2007 and M.P.No.1 of 2007 in T.C.(A) No.32 of 2007 are closed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench 'B',
   Chennai.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Wealth tax (Appeals) II,
   Chennai-34.

4. The Commissioner of Wealth-tax (Appeals)-I,
   Madras-34.

5. The Assistant Commissioner of Wealth-tax,
   Central Circle III(2), Madras-34.

6. The Assistant Commissioner of Income-tax,
   Central Circle III(2), Madras-34.

7. The Commissioner of Wealth Tax,
Chennai.

1 cc to Mrs. Pushya Sitaramanm SSC for Ir, Sr. 39869

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of 2007

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